

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 Tammy Cruz,  
5 Plaintiff

6 v.

7 Wal-Mart Stores, Inc., a Foreign Corporation;  
8 Yet Unknown Employee, an Individual; Does  
9 I through X, inclusive,  
10 Defendants

2:17-cv-00545-JAD-NJK

**Order Denying Plaintiff's Motion to  
Remand**

[ECF No. 12]

11 Plaintiff Tammy Cruz sues defendants Wal-Mart Stores, Inc. and an unknown Wal-Mart  
12 employee for personal injuries she allegedly sustained from a slip-and-fall accident that occurred  
13 at a Las Vegas Wal-Mart store.<sup>1</sup> Wal-Mart removed this case from a Nevada state court based on  
14 diversity jurisdiction.<sup>2</sup> Cruz now moves to remand this case back to state court, arguing that the  
15 case value does not meet the amount-in-controversy requirement.<sup>3</sup> I find that Wal-Mart has  
16 satisfied its burden of proving that the \$75,000 amount-in-controversy threshold is met, and I  
17 deny Cruz's motion.

18 **Background**

19 Cruz alleges that she sustained personal injuries to her head, neck, back, arms, and legs  
20 after she slipped on a liquid substance on the floor of a shopping aisle at Wal-Mart.<sup>4</sup> Her  
21 complaint does not specify the exact amount of damages sought, but for both her first and second  
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24 <sup>1</sup> ECF No. 1 at 11–12.

25 <sup>2</sup> *Id.* at 2.

26 <sup>3</sup> ECF No. 12.

27 <sup>4</sup> ECF No. 1 at 2, 12–13.  
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1 claim for relief, she prays for general and special damages, each in excess of \$15,000.<sup>5</sup> Cruz  
2 requested exemption from the state court-annexed mandatory arbitration program for cases  
3 valued at less than \$50,000 by arguing that “it is readily apparent that [her] personal injury claim  
4 has jury verdict potential well in excess of \$50,000,”<sup>6</sup> and by providing a medical table with past  
5 and future expenses totaling \$107,606.53.<sup>7</sup> Wal-Mart removed,<sup>8</sup> and Cruz filed this motion to  
6 remand, dropping \$85,248 in future medical expenses from her damages table and claiming that  
7 Wal-Mart “failed to meet the jurisdictional requirements that [her] claim exceeds \$75,000.”<sup>9</sup>

### 8 **Discussion**

9 “Federal courts are courts of limited jurisdiction,”<sup>10</sup> so there is a strong presumption  
10 against removal jurisdiction, and “federal jurisdiction must be rejected if there is any doubt as to  
11 the right of removal in the first instance.”<sup>11</sup> A defendant may remove any action brought in state  
12 court over which the federal district courts have original jurisdiction, but the defendant always  
13 has the burden of establishing that removal is proper.<sup>12</sup> Removal of a case from state court is  
14 proper in “diversity” cases in which (1) there is diversity of citizenship between the plaintiff and  
15 each defendant and (2) the amount in controversy exceeds \$75,000.<sup>13</sup> In cases that are not  
16 removable based on the initial pleadings, defendants have the opportunity to remove the case  
17 within 30 days after receiving “an amended pleading, motion, order or other paper from which it

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19 <sup>5</sup> *Id.* at 15.

20 <sup>6</sup> *Id.* at 29.

21 <sup>7</sup> *Id.* at 29, 39.

22 <sup>8</sup> *Id.* at 5.

23 <sup>9</sup> ECF No. 12 at 4.

24 <sup>10</sup> *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994).

25 <sup>11</sup> *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

26 <sup>12</sup> *Id.*

27 <sup>13</sup> 28 U.S.C § 1332(a)(1).

1 can be ascertained from the face of the document that removal is proper.”<sup>14</sup> If the state-court  
2 complaint “does not specify a particular amount of damages, the removing defendant bears the  
3 burden of establishing, by a preponderance of the evidence,” that the amount in controversy  
4 exceeds \$75,000.<sup>15</sup> The removing defendant, however, is not required “to predict the trier of  
5 fact’s eventual award with certainty.”<sup>16</sup>

6 The parties do not dispute that the diversity-of-citizenship requirement is met; they only  
7 disagree over whether the amount-in-controversy exceeds \$75,000.<sup>17</sup> In support of its petition for  
8 removal, Wal-Mart provides Cruz’s medical-expenses table found in her request for exemption  
9 from arbitration, in which Cruz claims that her past and future expenses total \$107,606.53.<sup>18</sup> In  
10 support of her remand motion, Cruz submits a new medical table totaling \$22,358.53 in past and  
11 future expenses, an amount that she arrives at by omitting (without explanation) the last \$85,248  
12 line item for “Future Treatment Expenses per Dr. Sharma” from her earlier table.<sup>19</sup> Cruz also  
13 submits the \$59,999 offer of judgment she served on Wal-Mart before Wal-Mart filed for  
14 removal as evidence that the amount in controversy is less than \$75,000.<sup>20</sup>

15 Wal-Mart has shown that removal was proper based on Cruz’s valuation of her medical  
16 expenses alone at \$107,606.53.<sup>21</sup> Cruz’s apparent abandonment of her claim for more than  
17 \$85,000 in future medical expenses does not impact this analysis. “Events occurring after the  
18 filing of the complaint [including stipulations, affidavits, and amendments to pleadings] that  
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20 <sup>14</sup> *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005); 28 U.S.C. § 1446(b).

21 <sup>15</sup> *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

22 <sup>16</sup> *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

23 <sup>17</sup> ECF No. 12.

24 <sup>18</sup> ECF No. 1 at 39.

25 <sup>19</sup> ECF No. 12 at 8.

26 <sup>20</sup> *Id.* at 10.

27 <sup>21</sup> ECF No. 1 at 39.

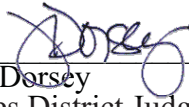
1 reduce the amount recoverable below the requisite amount do not oust the court from  
2 jurisdiction.”<sup>22</sup> And although an offer of judgment can be “relevant evidence of the amount in  
3 controversy if it appears to reflect a reasonable estimate of the plaintiff’s claim,”<sup>23</sup> Cruz has not  
4 shown how her \$59,999 offer of judgment could be a reasonable estimate of her claim when, one  
5 day earlier, she represented to the state court that her “past and future medical expenses total  
6 \$107,606.53.”<sup>24</sup>

7 Accordingly, I find that Wal-Mart has satisfied its burden of proving by a preponderance  
8 of the evidence that the amount in controversy exceeds the requisite \$75,000 threshold necessary  
9 to vest this court with jurisdiction over this matter.

### 10 Conclusion

11 Accordingly, it is HEREBY ORDERED that **Cruz’s motion to remand to state court**  
12 **[ECF No. 12] is DENIED.**

13 DATED: August 4, 2017

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16 Jennifer A. Dorsey  
17 United States District Judge  
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25 <sup>22</sup> *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471, 1473 (9th Cir. 1997) (citing *St. Paul*  
26 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938)).

27 <sup>23</sup> *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002).

28 <sup>24</sup> ECF No. 1 at 29.